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First in Elections, First in Reforms: Can New Hampshire be First in the Nation to Implement Changes to Campaign Finance?

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ABSTRACT. As Americans prepare for the 2020 presidential election, one thing is for certain—the candidates will make their way into your home. While they might not physically step foot into your living room, they will appear on your television, on your laptop, and on your phone. Why? Because in the United States, campaigns are won by candidates communicating with you, the voters. It is not feasible to physically shake hands with the entire population of the country. Instead, individuals running for office have to introduce themselves to voters some other way. Television advertisements, sponsored posts on social media, and robocalls are all methods politicians use to persuade the public that they are deserving of your vote in the upcoming election.

This outreach costs money. In the weeks, months, and even years before an election, candidates running for office must find a way to fund their campaigns. The race to raise money is a full-contact sport, as candidates bombard potential contributors with calls, mailings, and emails. Candidates attend house parties, high-priced dinners, and donor meetings in hopes of winning the fundraising race, separate, of course, from the actual political race to win the election. Candidates are not the only ones raising and spending money. Other groups—such as political parties, Political Action Committees, and unions—support favorable candidates by advertising and providing other outreach to show their support. And with the impact of the *Citizens United* decision, corporations now have a bigger seat at the table than before. The race to raise, buy, and spend on a political campaign has become just as arduous and contentious as the race for an elected position.

Americans are frustrated by this constant battle. Too often, they don't know who is funding an election or who is paying for an advertisement. Candidates are also vocal about their desire to change the system. Many have suggested modifications and some have even taken personal pledges to limit the influence of money in politics. But without true reform, the wealthier candidates—those who have "succeeded" at the fundraising race—will have the money needed to work their way into your living room, while the candidates with less campaign funds may remain unknown and unelected. How can we achieve a better balance of spending less and disclosing more, while still ensuring candidates have the ability to market themselves to the public? Part I of this Note looks at the current campaign finance system in the United States and the impact of

Citizens United. Part II assesses what has been done or considered in other countries and across the United States to lessen the influence of money in politics. Part III applies these ideas on a smaller scale to New Hampshire—the home of the first-in-the-nation presidential primary and the state with the largest legislative body aside from the U.S. Congress—to suggest ways the system can be improved and transformed. Unlike a seat for elected office, the race to reform campaign finance is a bipartisan contest, and its victory can be celebrated by all Americans, regardless of political party.

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INTRODUCTION

> *We must get the government out of the hands of the special interests, the big-money people, and give it back to you. There are 22,000 lobbyists in Washington today, and they spent $1.4 billion . . . last year lobbying. Anybody here feel represented? Does anybody here think we need more money in politics?*[1]
>
> *Senator John McCain*

> *In the year 2016, with a political campaign finance system that is corrupt and increasingly controlled by billionaires and special interests, I fear very much that, in fact, "government of the people, by the people, and for the people" is beginning to perish in the United States of America. We cannot allow that to happen.*[2]
>
> *Senator Bernie Sanders*

During the 2018 midterm elections, at least $5.2 billion were spent on political campaigns.[3] In Texas, the U.S. Senate race between newcomer Beto O'Rourke and incumbent Ted Cruz was not only the most expensive Senate race in U.S. history, but also the record-breaker for quarterly fundraising when O'Rourke raised $38 million in just a three-month period.[4] But this is not just a function of the United States' current political climate. In 2012, Barack Obama's reelection campaign cost $700 million, with $400 million alone spent on advertising.[5] And during the 2016 presidential primary, one advertisement alone, supporting Ohio Governor John Kasich, cost a total of $375,000 to run on network television—more than seven times

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1 Walter Shapiro, *How John McCain Nearly Made the GOP the Party of Campaign Finance Reform*, BRENNAN CTR. FOR JUST.: COMMENTARY (Aug. 25, 2018), https://www.brennancenter.org/blog/how-john-mccain-nearly-made-gop-party-campaign-finance-reform [https://perma.cc/C2XL-3H4H].

2 BERNIE SANDERS, OUR REVOLUTION 203 (2016).

3 Kate Ackley, *Democrats Go Into 2019 With Ethics Blazing*, ROLL CALL (Dec. 3, 2018, 5:05 AM), https://www.rollcall.com/news/policy/democrats-go-2019-ethics-blazing [https://perma.cc/Y8CC-V7HK].

4 Jeremy Wallace, *Cruz v. O'Rourke is Most Expensive U.S. Senate Race in History*, HOUS. CHRON. (Oct. 12, 2018, 7:10 PM), https://www.houstonchronicle.com/news/politics/texas/article/Cruz-vs-O-Rourke-is-most-expensive-U-S-Senate-13303745.php [https://perma.cc/8UQ7-RLL8].

5 Olga Khazan, *Why Germany's Politics are Much Saner, Cheaper, and Nicer Than Ours*, ATLANTIC (Sept. 30, 2013), https://www.theatlantic.com/international/archive/2013/09/why-germany-s-politics-are-much-saner-cheaper-and-nicer-than-ours/280081 [https://perma.cc/AD53-787C].

the annual median U.S. household income.[6] In 2016, the average cost of running for a federal legislative office was $1.5 million for a seat in Congress and $19.4 million for a seat in the U.S. Senate.[7] In the Senate, that number increased from 2014's average cost of $16.8 million.[8] How can we sustain this ever-increasing drive for more, more, more? This Note first examines the current campaign finance system in the United States and the impact of *Citizens United*. In Part II, it assesses what has been done or considered in other countries and across the United States to lessen the influence of money in politics. Part III applies these ideas on a smaller scale to New Hampshire—the home of the first-in-the-nation presidential primary and the state with the largest legislative body aside from the U.S. Congress—to determine if anything can be done in hopes of improving the system.

I. A SNAPSHOT OF CAMPAIGN FINANCE IN THE UNITED STATES

Politicians running for office, and those who are currently in office, may talk about a broken campaign finance system, but is this just a talking point used to score votes? Are Americans concerned about the amount of money being spent in politics or are they more focused on things that may directly impact them, like an increase in border security or expanded health care coverage? It seems campaign finance is a concern of many.[9] A 2018 study by the Pew Research Center showed that most Americans believe the design of government needs major changes.[10] Closely connected to the government's design is the issue of campaign finance.[11] A majority of Americans—seventy-seven percent—think there should be limits on the amount of money individuals and groups can spend on political campaigns.[12] And during a time of political polarization, when billions of dollars were spent on the

6 Danielle Kurtzleben, *2016 Campaigns Will Spend $4.4 Billion on TV Ads, But Why?*, NAT'L PUB. RADIO (Aug. 19, 2015, 9:57 AM), https://www.npr.org/sections/itsallpolitics/2015/08/19/432759311/2016-campaign-tv-ad-spending [https://perma.cc/5JP9-PP23].

7 Lee Drutman, Zocalo Pub. Square, *Do We Really Need Campaign Finance Reform?*, TIME (Jan. 16, 2016), http://time.com/4182502/campaign-finance-reform [https://perma.cc/WEX9-67U3]; Soo Rin Kim, *The Price of Winning Just Got Higher, Especially in the Senate*, CTR. FOR RESPONSIVE POL. (Nov. 9, 2016), https://www.opensecrets.org/news/2016/11/the-price-of-winning-just-got-higher-especially-in-the-senate [https://perma.cc/7JM6-3E4L].

8 Soo Rin Kim, *supra* note 7.

9 PEW RESEARCH CTR., THE PUBLIC, THE POLITICAL SYSTEM, AND AMERICAN DEMOCRACY 73 (Apr. 2018).

10 *Id.*

11 *See id.*

12 *Id.*

2018 midterm elections, sixty-five percent of Americans currently believe new laws could be effective in reducing the role of money in politics.[13] In a country where wealth is one significant political strength, among others, the "millionaire politician" phenomenon is quite real.[14] When candidates are equally regulated by contribution limits, the candidates with more wealth by way of personal reserve funds have a competitive advantage.[15] Political fundraising has become a constant and ongoing process where elected officials spend just as much time raising money as they do governing.[16]

A. How Did We Get Here?

The first significant attempt to regulate campaign finance was the Federal Election Campaign Act, which was signed into law by President Richard Nixon in 1971.[17] It established the framework for campaign funding in the United States by placing limits on both contributions made *to* political candidates and on campaign expenditures made *by* candidates.[18] Five years later, the Act was challenged in its entirety by *Buckley v. Valeo*.[19] In *Buckley*, the Supreme Court assessed whether the Federal Election Campaign Act was constitutional, and specifically whether the Act's limits on contributions and expenditures violated First Amendment rights.[20] The Court discussed that although both types of limits have implications on free speech, expenditure limits have the potential to negatively impact political expression.[21] For example, if expenditures were limited, a candidate may also have to limit something like advertising, which the Court equated to a limit on communication.[22] Therefore, the Court held that limits on campaign expenditures were an unconstitutional restriction of a form of political speech.[23] However, the Court noted that contributions, if limited, represent just a "marginal restriction" on speech, as opposed to the major speech restrictions that would result from a limit

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13 *Id.*

14 Andrew Spencer, *Cleaning Elections*, 54 ARIZ. L. REV. 277, 285 (2012).

15 *Id.* at 285–86.

16 *See id.* at 286.

17 *Id.* at 282.

18 *Id.*

19 424 U.S. 1 (1976).

20 *Id.* at 13–14.

21 *Id.* at 23.

22 Spencer, *supra* note 14, at 282.

23 *Buckley*, 424 U.S. 1 at 43.

on campaign expenditures.[24]

The holding of *Buckley* was the law for over twenty years. In 2010, the U.S. Supreme Court decided the landmark case *Citizens United v. Federal Election Commission*.[25] The crux of *Citizens United* was whether a nonprofit organization could use its funds to create a documentary in opposition to then-candidate Hillary Clinton during the 2008 presidential primary.[26] Prior to the decision, corporate political contributions were much more restricted than donations by an individual.[27] But in a 5-4 ruling, the Court overturned precedent and struck down restrictions on corporate advocacy for or against a candidate for federal office.[28] Similar to *Buckley*, the Court reasoned that political advocacy was akin to free speech; therefore, "the Government lacks the power to ban corporations from speaking."[29]

While the *Citizens United* decision did not change the fact that corporations cannot directly donate to candidates, it opened the door for corporate money to flow in many other ways.[30] Independent expenditures, for example, are no longer restricted from corporate participation.[31] Additionally, there are now more opportunities for donors to shield their identities and operate under the radar.[32] The creation of Super Political Action Committees ("super PACs") has emerged as a way for corporations and other types of groups to accept unlimited contributions from donors.[33] A super PAC must disclose its donors but can accept unlimited

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24 *Id.* at 20–21; Spencer, *supra* note 14, at 285.

25 558 U.S. 310 (2010).

26 Elizabeth Getman, *Citizens United: Latest Campaign Finance Decision Creates More Gray Areas*, 35 ADMIN. & REG. L. NEWS 13, 13–14 (2010).

27 Michael S. Kang, *The End of Campaign Finance Law*, 98 VA. L. REV. 1, 2–3 (2012).

28 Getman, *supra* note 26, at 13.

29 *Id.* at 13–14 (citing *Citizens United*, 558 U.S. 310 at 347).

30 *Id.* at 15.

31 Kang, *supra* note 27, at 5. *See generally Making Independent Expenditures*, FEC.GOV, https://www.fec.gov/help-candidates-and-committees/making-independent-expenditures [https://perma.cc/B3MX-FMD5] (explaining that an independent expenditure is a type of political advertisement or other form of publicity and support that expressly advocates for the election or defeat of a candidate and is not made in collaboration with or on the request of a candidate or a candidate committee.).

32 Nicole A. Gordon, *Options for Continued Reform of Money in Politics: Citizens United is Not the End*, 80 ALB. L. REV. 83, 84 (2017).

33 Karl Evers-Hillstrom, *A Look at the Impact of* Citizens United *on its 9th Anniversary*, CTR. FOR RESPONSIVE POL. (Jan. 21, 2019), https://www.opensecrets.org/news/2019/01/citizens-united [https://perma.cc/72DD-9EQK]. *See generally Types of Nonconnected PACs*, FEC.GOV,

contributions.[34] And many of these donors are "dark money" nonprofits that are regulated differently and whose donors are shielded from identity.[35] Super PACs can therefore comply with the rules of donor disclosure by simply providing the name of the nonprofit donor, but are able to keep the identity of the actual funding source private.[36] Campaign finance is now often a search to find the least-regulated—yet allowable—means of raising and spending money.[37] And current law allows for options that are broad and often non-transparent.

Since *Citizens United*, there has been a surge in money spent on political advertisements to persuade voters.[38] In 2002, just over $27.5 million was spent on political advertising by outside groups such as super PACs and other political organizations.[39] In 2010, the year *Citizens United* was decided, this number had grown to $309 million in spending.[40] But by 2018, this number surpassed $1 billion.[41] Super PACs, the primary player in this outside spending, do not have the same contribution limit burdens as typical Political Action Committees ("PACs").[42] Interestingly, the *Citizens United* ruling does not seem to have much of an effect on the spending of traditional PACs.[43] During the 2008 election cycle, PACs

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https://www.fec.gov/help-candidates-and-committees/registering-pac/types-nonconnected-pacs [https://perma.cc/H2F6-ESP2] (explaining that a super PAC is an "independent expenditure-only political committee" that is allowed to receive unlimited contributions from individuals, corporations, labor unions, and other groups for the purpose of spending the funds for or against political candidates. A super PAC must be independent and may not coordinate its spending with a candidate or committee.).

34 *Contributions to Super PACs and Hybrid PACs*, FEC.GOV, https://www.fec.gov/help-candidates-and-committees/taking-receipts-pac/contributions-to-super-pacs-and-hybrid-pacs [https://perma.cc/P2Y2-DE42].

35 *Dark Money Basics*, CTR. FOR RESPONSIVE POL., https://www.opensecrets.org/dark-money/basics [https://perma.cc/H3A7-LHVL]. "Dark money" refers to money contributed by a donor whose identity is not disclosed and the source of the funds is unknown. *Id.* It includes funding spent by either a super PAC or a political nonprofit. *Id.* Political nonprofits are not required to disclose their donors. Evers-Hillstrom, *supra* note 33. Super PACs may accept unlimited contributions from political nonprofits. *Id.*

36 Evers-Hillstrom, *supra* note 33.

37 *Id.*; Kang, *supra* note 27, at 5.

38 Evers-Hillstrom, *supra* note 33.

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.*

contributed a total of $416 million to various candidates.[44] Ten years later in 2018, post-*Citizens United*, PACs donated only slightly more—a total of $497 million.[45] This is hardly the sixty-nine percent increase seen by super PACs during a similar time period.[46]

B. Where Are We Now?

Citizens United is not the end of any regulation of campaign finance.[47] On a national level, the Federal Election Commission (FEC) continues to oversee and enforce the law regarding political contributions.[48] Established in 1974, the FEC was created to "protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws."[49] Its responsibilities cover three broad areas: restricting contributions to and expenditures for federal elections; publicly disclosing the funding of federal candidates; and publicly financing presidential campaigns.[50] Inside the political world, the FEC is perhaps best known for its mandates on political contribution limits.[51] Currently, an individual U.S. citizen may donate up to $2800 to a candidate per election.[52] On the high end of the spectrum, an individual or a single-candidate PAC may contribute $106,500 to a "National Party Committee Account" that may use the funds for an event such as a presidential nominating convention or an election recount.[53] Overall, there is a wide spectrum of regulation of campaign finance by the FEC.

Outside the federal landscape, the amount and extent of political contributions

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44 *Id.*

45 *Id.*

46 *Id.*

47 Gordon, *supra* note 32, at 85–86.

48 FED. ELECTION COMM'N, https://www.fec.gov [https://perma.cc/ZN88-JW2L].

49 *Mission and History*, FED. ELECTION COMM'N, https://www.fec.gov/about/mission-and-history [https://perma.cc/9SYS-YD5K].

50 *Id.*

51 Dale Levinthal, *Another Massive Problem with U.S. Democracy: The FEC is Broken*, ATLANTIC (Dec. 17, 2013), https://www.theatlantic.com/politics/archive/2013/12/another-massive-problem-with-us-democracy-the-fec-is-broken/282404 [https://perma.cc/6TRX-T7JH].

52 *Understanding Ways to Support Federal Candidates*, FED. ELECTION COMM'N, https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates [https://perma.cc/7PUZ-R99N].

53 *Id.*

are regulated by state law.[54] This presents a complex structure of rules that vary significantly not only by state, but also by who is contributing, the type of campaign structure the candidate is using, the office the candidate is vying for, the stage of the particular election, and other considerations.[55] The National Conference of State Legislatures (NCSL) lists five categories of contributors: individuals, state parties, PACs, corporations, and unions.[56] Several states, including Alabama, Nebraska, and Oregon, impose no restrictions at all on contributions from any type of donor to a candidate for office.[57] Many states prohibit any type of direct contributions from corporations and unions. But, the NCSL notes that in a number of these states, while direct contributions are prohibited, there is nothing to prevent employees of a corporation or members of a union from donating funds to a PAC that is funded separately from a corporate account.[58] And while several states, such as Missouri and Oklahoma, impose mandatory restrictions on individual contributions by using the FEC contribution limits as a general gauge,[59] others are leaps and bounds away from this number. For example, in California an individual can contribute up to $29,200 to a gubernatorial candidate each election cycle.[60] New York allows an individual donor to give up to $44,000 to a statewide candidate in the general election cycle.[61] It should be noted that the general election logically follows the primary election, during which time that same individual in New York can give that same candidate for state office up to $21,100, resulting in a potential total contribution of $65,000.[62]

While there are some methods of controlling and overseeing campaign finance in the United States, there is neither comity nor a one-size-fits-all approach to the issue. The difference in contribution limits between federal and state regulations creates confusion and complexity. Restrictions based on the type of contributor and the type of candidate add another layer of rules to the equation. And even when there are limits on donation, many states do not require public transparency on

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54 NAT'L CON. OF ST. LEG., *State Limits on Contributions to Candidates* (June 27, 2017), http://www.ncsl.org/Portals/1/Documents/Elections/Contribution_Limits_to_Candidates_2017-2018_16465.pdf [https://perma.cc/7JV2-GPD8].

55 *Id.*

56 *Id.*

57 *Id.* at 1,9,11.

58 *Id.* at 14 n.d.

59 NAT'L CON. OF ST. LEG, *State Limits on Contributions to Candidates, supra* note 54.

60 *Id.* at 2.

61 *Id.* at 10.

62 *Id.*

where the money is coming from—leaving voters in the dark about who exactly is funding a candidate's election.

C. Where Are We Going?

From just a high-level review of these numbers, it is clear there is a great deal of money in politics. And while there are mandates in place that prevent completely unlimited funding for any candidate, an individual, a PAC, or a corporation can still make significant contributions to political candidates—and the contribution limits may actually encourage people to be creative about the way they do so—in order to circumvent the spirit of any laws or restrictions. This is part of the problem discussed by some candidates, office holders, advocacy groups, and citizens when they talk about a "rigged" campaign finance system.[63] Many may recall the 2016 presidential primary during which Bernie Sanders demanded to change the country's "corrupt" method of funding elections.[64] And while this was a talking point that received cheers and enthusiasm from his rally supporters, his analysis of the issue, at least on its face, was more bipartisan.[65] As he noted on his 2016 campaign website, now run by the nonprofit Our Revolution:

> The need for real campaign finance reform is not a progressive issue. It is not a conservative issue. It is an American issue. It is an issue that should concern all Americans, regardless of their political point of view, who wish to preserve the essence of the longest standing democracy in the world, a government that represents all of the people and not a handful of powerful and wealthy special interests.[66]

Other groups also share Senator Sanders' passion for change. The group End Citizens United is a grassroots PAC established to "counter[] the disastrous effects of *Citizens United* and reform[] our campaign finance system."[67] Its website initially opens to show small black and white headshots of current and former federal office

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63 Michelle Ye Hee Lee, *Despite Pledge to "Drain the Swamp," Trump has Shown Little Interest in Beefing Up the Federal Election Commission*, WASH. POST (Mar. 14, 2018), https://www.washingtonpost.com/politics/despite-pledge-to-drain-the-swamp-trump-has-shown-little-interest-in-beefing-up-the-federal-election-commission/2018/03/13/c95971da-2252-11e8-badd-7c9f29a55815_story.html?utm_term=.77f951d6772f [https://perma.cc/M4W7-VWQS].

64 Carrie Levine, *Sanders, Clinton Want Campaign Finance Overhaul, But Face Huge Obstacles*, THE CTR. FOR PUB. INTEGRITY (Mar. 24, 2016, 11:52 AM), https://publicintegrity.org/federal-politics/sanders-clinton-want-campaign-finance-overhaul-but-face-huge-obstacles [https://perma.cc/B7P6-6CGE].

65 END CITIZENS UNITED, https://endcitizensunited.org [https://perma.cc/NQ5L-TN6L] (last visited Sept. 5, 2019).

66 *Id.*

67 END CITIZENS UNITED, https://endcitizensunited.org/ [https://perma.cc/NQ5L-TN6L].

holders in an apparent attempt to show the reader just how widespread the problem may be.[68] The contrast of these black and white photos against the bold red, white, and blue of the larger website is likely done as a visual to compare "good versus evil." However, while the website may be strong on visuals, it is lacking in specifics. The group lists its main goal as overturning *Citizens United*.[69] But how? It seems the strategy is to promote and elect "pro-reform candidates" who will refuse to take certain types of funding—mainly corporate-based—and then, once they are in office, lobby these individuals to band together and change campaign finance laws.[70] Is it that easy?

The ushering in of a new Democratic majority in the U.S. House of Representatives created an opportunity to raise and possibly implement some of these initiatives. Almost as soon as the final votes had been counted in November 2018, House Democrats released their plan for major campaign finance and ethics overhauls, pledging "transformative reforms."[71] Initially, their proposal called for an increase in disclosures of political donations by organizations such as unions, corporations, and super PACs.[72] Another portion of the legislation discussed provides tax credits to donors who make small campaign contributions.[73] A few months later, the proposal developed into H.R. 1, titled "The For the People Act."[74] The bill included specific changes to the current campaign finance laws, including imposing mandatory disclosures of donors who contribute more than $10,000 to a super PAC; requiring more specific disclosure of the funders behind political advertising; and mandating expenditures of Presidential Inaugural Committees.[75] A less-specific, yet lofty goal of the Act is a reversal of *Citizens United*.[76] Specifically, those behind H.R. 1 believe "because this distortion of the Constitution has prevented truly meaningful regulation or reform of the way we finance elections in America, a constitutional amendment is needed to achieve democracy for all the

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68 *Id.*

69 About Us, END CITIZENS UNITED, https://endcitizensunited.org/about [https://perma.cc/TC3Z-RDU2] (last visited Sept. 5, 2019).

70 *Id.*

71 Ackley, *supra* note 3.

72 *Id.*

73 *Id.*

74 Democracy Reform Task Force, H.R. 1, 116th Cong. (2019).

75 H.R. 1 at 363, 433, 575.

76 H.R. 1 at 443–444.

people." [77] As the 2020 presidential election ramps up, several Democratic candidates have also pledged personal initiatives to limit the impact of money in politics.[78] Senator Elizabeth Warren, for example, is not only refusing to accept contributions from PACs, but is also pledging to forego private fundraising events that would benefit her campaign and is also eliminating her participation in donor calls to solicit contributions.[79] In doing so, Warren admits her decision "will ensure I'm outraised in this race."[80]

While these efforts for change encompass novel ideas and lofty goals, are they realistic? An overturn of *Citizens United* would require a constitutional amendment or a dramatic change to the current makeup of the Supreme Court. Short of that, individual candidates and campaigns may be left to impose their own campaign finance restrictions, based on personal beliefs and impressions of what the country is looking for at that particular moment. Is that really the best way to make any progress in mending the shortcomings of the American campaign finance structure?

II. SKETCHING THE LANDSCAPE OF MONEY IN POLITICS

Though American political democracy and the role money currently plays in it are unique in many ways, the influential power of money in politics is a global phenomenon. Other countries also deal with an influx of political persuasion based on money but have found ways to regulate campaign funding and expenditures in various ways. And back at home in the United States, several states have taken advantage of their ability to create state mandates that may differ from federal regulations on campaign finance. Looking across the country—and around the world—some innovative ideas could help form a framework for reform.

A. International Models Across the Globe

Money is certainly an ingrained part of politics in the United States. But while this is not unique to this country, other countries have different systems in place to mitigate the impact of money in politics. The International Institute for Democracy

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77 H.R. 1 at 443–444.

78 *See* Natasha Korecki, *Warren Shuts Down Donor Dinners, Insider Access*, POLITICO (Feb. 25, 2019, 6:30 AM), https://www.politico.com/story/2019/02/25/elizabeth-warren-campaign-donors-1182736 [https://perma.cc/T935-U8FA].

79 *Id.*

80 Natasha Korecki & Maggie Severns, *Warren Creates Purity Test Unseen in Modern Presidential Politics*, POLITICO (Feb. 25, 2019, 7:15 PM), https://www.politico.com/story/2019/02/25/elizabeth-warren-2020-campaign-fundraising-1185583 [https://perma.cc/VG7M-FQH5].

and Electoral Assistance (International IDEA) gathered data on political funding across the globe.[81] The results show the range of methods other countries use to regulate campaign finance.[82] Some countries—such as Germany, Switzerland, and Spain—have not placed any limits on either campaign contributions or expenditures.[83] In Canada, France, and Japan, among others, political campaigns are limited on both what they can receive and what they can spend.[84] The United Kingdom (UK), Austria, and Italy place caps on expenditures only, while the United States is one of only two countries (along with Finland) that regulate contribution limits but does not put a limit on expenditures.[85]

What does all this mean? At face value, unlimited contributions or expenditures would seem likely to cause a free-for-all chaotic election cycle to develop where candidates would race to out-raise, out-buy, and out-spend each other. Interestingly, this does not appear to be the case. In many of these countries, other factors negate such a strong drive to raise and spend, such as strong public campaign finance systems, a condensed timeframe when candidates are permitted to campaign, and a ban or limit on television advertising.[86] Germany, for example, limits its campaign season to only six weeks.[87] And during this time, candidates for office are only allowed to make one ninety-second advertisement for their entire election campaign.[88] The number of times the ad runs on television is proportionate to the number of votes the candidate's political party received in the last election.[89]

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81 Paul Waldman, *How Our Campaign Finance System Compares to Other Countries*, THE AMERICAN PROSPECT (Apr. 4, 2014), https://prospect.org/article/how-our-campaign-finance-system-compares-other-countries [https://perma.cc/YEL9-5BS3].

82 *Id.*

83 *Id.*

84 *Id.*

85 *Id.*

86 *Id.*

87 Khazan, *supra* note 5. *See generally* Elizabeth Schulze, *Baffled by the Electoral College? Germany's System Might be More Confusing*, CNBC (Sept. 15, 2017, 6:32 AM), https://www.cnbc.com/2017/09/15/german-elections-explained-chancellor-bundestag-voting-parties-and-merkel.html [https://perma.cc/Q5GY-QQWT]. West and East Germany were unified in 1990, creating a democratic republic which abides by a constitution created in 1949. *Id.* The country is led by a Chancellor who is elected by its Parliament every four years after receiving a majority vote. *Id.* There are two major political parties in Germany, the Christian Democratic Union and the Social Democratic Party. *Id.*

88 Khazan, *supra* note 5.

89 *Id.*

Campaigns in Germany also appear more civil than they are in the United States.[90] German citizens say this is due in part to the culture that has developed in the country after its reunification in the early 1990s which has driven candidates away from things like attack ads and negative campaigning.[91] After Chancellor Angela Merkel's 2013 reelection, her opponent graciously conceded his loss; the two rivals then appeared together just hours later on a primetime television program.[92] And unlike the United States, German candidates don't target individual voters, because they simply don't know which party an individual belongs to.[93] Germany's historic past, filled with strife and mistrust, impacts the available data candidates can collect about voters. Generally speaking, Germans are reluctant to share information about themselves or their political party, which results in candidates going door-to-door and talking with residents who may be of the polar opposite political persuasion.[94] With very little use of internet-based outreach, scant advertising, and only one debate each election cycle, German voters typically remain undecided on their candidate until Election Day.[95] Although Germany may not have direct limits on campaign contributions, their system is limited and controlled in other ways, some of which could be modified to work in the United States.

The UK also imposes some restrictions on campaign finance. In response to outdated campaign finance laws, the UK passed the Political Parties, Elections and Referendums Act (PPERA) of 2000.[96] While the legislation included important reforms such as regulating exactly who can contribute (only citizens registered to vote and companies incorporated in the country) and mandating donor disclosure,

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90 *Id.*

91 *Id.*

92 *Id.*

93 *Id.*

94 *Id.*

95 *Id.*

96 Kathleen Hunker, *Elections Across the Pond: Comparing Campaign Finance Regimes in the United States and United Kingdom*, 36 HARV. J.L. & PUB. POL'Y 1099, 1120 (2013). *See generally United Kingdom: Constitution and Politics*, THE COMMONWEALTH, http://thecommonwealth.org/our-member-countries/united-kingdom/constitution-politics [https://perma.cc/8B6J-BCUZ]; *see also How Government Works*, GOV.UK, https://www.gov.uk/government/how-government-works [https://perma.cc/6PB7-JGF7]. The United Kingdom is governed as a parliamentary democracy under a constitutional monarchy. *Id.* Its head of state is the Prime Minister, who is appointed by the Monarch, based on guidance that the Prime Minister should be a member of the majority political party. *Id.* There are two major political parties, the Conservative Party and the Labour Party. *Id.* There is no single constitution in the UK, resulting in a sovereign parliament that is not balanced by judicial oversight. *Id.*

the Act did not include a limit on campaign contributions.[97] The UK Parliament strongly believed that the ability to make a donation was an important political right.[98] It hoped that the disclosure requirement would combat any risk of corruption.[99] Alongside these rules, the PPERA established caps on expenditures for both candidates and political parties.[100] While Parliament recognized this need to contain costs, other outside parties pushed for higher expenditure limits than even the Parliament officeholders had proposed, arguing that the lower limits were a restriction on speech.[101] However, unlike in the United States, the parties settled on a compromise that provided a reasonable spending limit while also being cognizant of one's freedom of expression.[102] Similar to Germany, the UK does not directly limit political contributions; instead both countries address other parts of the campaign finance system to mitigate the danger posed by an overabundance of money in politics.

In the United States, are we looking at this problem too narrowly, especially in light of *Citizens United* and the current make-up of the Supreme Court? Countries like Germany and the UK demonstrate the value of looking at the problem holistically and considering the aggregate impact of adjusting various parts of the system. Capping campaign contributions does not have to be the United States' only solution, and it is an unlikely option given the political trends. Instead, by placing more emphasis on parts of the political process that are just as impactful and effective as contribution limits, the systems in other countries can serve as a model for alternative means of reforms here in the United States.

B. State and Local Guidelines Within the United States

Looking closer to home, many states have decided to take matters into their own hands, developing novel and unique ideas to chip away at the impact of money in politics, despite the challenges facing the national debate. While the traditional methods of campaign finance regulation are practiced by most states—including disclosure and reporting requirements, contribution limits, and public financing methods—many states have tested other ideas on smaller scales. Because the impact of *Citizens United* primarily affects federal candidates, state initiatives are

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97 Hunker, *supra* note 96, at 1122.

98 *Id.*

99 *Id.*

100 *Id.* at 1122–23.

101 *Id.* at 1124.

102 *Id.*

more impactful on state candidates, and may also be more flexible and innovative than those established by Congress.

1. Financial and Ethical Oversight

Just as the 2018 midterm elections triggered changes in leadership on the federal level, many states also voted for changes to their campaign finance regulations. Voters in several states, including Massachusetts, New Mexico, and North Dakota, passed measures to establish ethics commissions to oversee campaign finance.[103] While the states' commissions vary in their duties, they all serve as watchdogs for money mismanagement and determine and promote new ideas for campaign finance reform.[104] The measure in Massachusetts was so popular that it passed with more than seventy percent of the vote.[105] In Colorado, voters rejected a ballot measure that would have made campaign contributions *less* restrictive.[106] And in Missouri, voters passed Amendment 1, known as "Clean Missouri," effectively *lowering* contribution limits for state candidates.[107] This change was supported by sixty-two percent of Missouri voters.[108] The enthusiasm for these initiatives shows the public's desire for some oversight and restraint on campaign finance.

2. Public Funding

Aside from these recently passed measures, other states and localities have had different systems in place for years. Public funding is perhaps the most idealistic

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103 Kaitlin Washburn, *Many States Pass Campaign Finance Reform Measures During Midterms*, CTR. FOR RESPONSIVE POL. (Nov. 7, 2018), https://www.opensecrets.org/news/2018/11/states-pass-campaign-finance-reform-18 [https://perma.cc/KZ5G-7P4T]. Massachusetts will create a 15-member citizens commission to determine how the state can regulate corporate spending, among other related topics. *Id.* New Mexico's ballot measure will form a 7-member ethics commission to oversee claims of ethical misconduct by lobbyists and elected officials stemming from campaign funding. *Id.* North Dakota's initiative will establish an ethics commission, ban foreign political contributions, regulate lobbying, and require campaign finance information to be publicly available. *Id.*

104 *Id.*

105 *Id.*

106 *Id.*

107 *Id.*; David Reynolds, *Amendment 1: Voters Strongly Support Clean Missouri Redistricting Plan, Ethics Reform*, MISSOURIAN (Nov. 6, 2018), https://www.columbiamissourian.com/news/elections/amendment-voters-strongly-support-clean-missouri-redistricting-plan-ethics-reform/article_6d2a9728-e155-11e8-b58e-43f1d7945f4e.html [https://perma.cc/5MHM-25KC].

108 Reynolds, *supra* note 107.

yet unexamined type of reform. While some perceive public financing of elections to be a far-left, ultra-progressive goal of the government to fund all campaigns, various forms of public funding currently exist across the country.[109] Public funding can be accomplished in several ways, including providing tax rebates to donors, matching funds raised, establishing "clean elections," and providing vouchers to contributors.[110] Some of these programs have been surprisingly successful, especially on the local level. New York City, Los Angeles, and Tucson all participate in some form of matching program.[111] To participate in such a plan, a candidate must raise an established amount of funding from small contributions.[112] Once this threshold is reached, the government matches these funds—which can go as high as $6 of government money for every $1 of private money raised in some locations.[113] The outcome of such programs reinforces the importance of small donors and also allows a candidate to become less dependent on wealthy donors.[114] Political activists and grassroots voters may also feel that their donation means more and has a stronger impact on the candidate.[115] However, one downside to many of these programs is that the candidates must opt-in voluntarily.[116]

Aside from giving a candidate a direct benefit from public funding, some states and municipalities provide incentives to small donors as well.[117] In Minnesota, for example, a small donor can apply for a tax refund of up to $50.[118] And in Seattle, a program was developed to provide campaign vouchers to individuals seeking to make low-dollar donations.[119] Residents are given up to four $25 vouchers which can be donated to the candidate of their choosing.[120] Seattle's motive behind the program was to encourage participation in the political process by allowing those who may not typically have the funds to donate to a campaign to be able to show

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109 Gordon, *supra* note 32, at 87.

110 *Id.*

111 *Id.* at 89.

112 *Id.* at 88.

113 *Id.*

114 *Id.*

115 *Id.*

116 *Id.*

117 *Id.* at 90–91.

118 *Id.* at 91.

119 *Id.* at 91–92; Zocalo Pub. Square, *supra* note 7.

120 Gordon, *supra* note 32, at 91; Zocalo Pub. Square, *supra* note 7.

their support of a candidate.[121] However, this program is not without its faults. Candidates must still opt-in and comply with certain stipulations of the program.[122] The concept also runs the risk of voters selling their vouchers to others, profiting off the system and skewing funds arbitrarily.[123]

3. Donor Disclosure

Another concern of campaign spending—on both the federal and state level—is the anonymity of donors. Several states have attempted to combat this problem by not only mandating disclosure information of individuals, but also opening up identities of donors to PACs and other types of bundling.[124] One example is found in Idaho—where, for over forty years—the state has abided by its "Sunshine Initiative."[125] The goal of the program is transparency—to "promote openness in government and avoid secrecy by those giving financial support to state election campaigns and those promoting or opposing legislation."[126] Essentially, the Sunshine Initiative mandates disclosure of the identities of all donors—whether it's an individual giving $25 to a candidate, or a corporation giving large sums of money to a PAC.[127] The program also prevents the problem of "nesting" PACs in which one political committee is just the front for several others.[128] Another important part of the Idaho program is that it prevents nonprofit organizations from taking advantage of the disclosure loophole that exists in section 501(c)(4) of the federal tax law.[129] Under federal law, a 501(c)(4) group is a social welfare organization, not a political committee, so it is not required to list its donors.[130] Therefore, instead of

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121 Gordon, *supra* note 32, at 92.

122 *Id.* at 91–92.

123 *Id.* at 92.

124 Ben Ysura, *Idaho's Sunshine Laws and the Citizens United Case: Promoting an Informed Electorate Through Election Campaign Disclosure*, 58 ADVOCATE 35, 35–36 (2015).

125 *Id.* at 36.

126 *Id.*

127 *Id.* at 36–37.

128 *Id.* at 37.

129 *Id. See generally Social Welfare Organizations*, IRS.GOV, https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations [https://perma.cc/E98R-ZAN3]. A 501(c)(4) is a tax-exempt social welfare organization. *Id.* To qualify for this status under the Internal Revenue Code, the group must not be organized for profit and must operate exclusively to promote social welfare. *Id.* While such groups may participate in some political activity, it cannot be the organization's primary activity. *Id.*

130 Ysura, *supra* note 124, at 35–36.

allowing a nonprofit-type group to be exempt from the disclosure rules of PACs, Idaho's law broadly defines a political committee as any person specifically designated to support or oppose any candidate or measure, in part.[131] Therefore, 501(c)(4) groups must abide by the same donor reporting and identification requirements as individuals.[132]

While disclosing the identity of donors is an important part of reform, what about the public's desire for knowledge of who is buying and promoting political advertisements? As most recently evidenced in the 2016 presidential elections, the identity of who was sponsoring an ad in support of—or in opposition to—a particular candidate was often unknown.[133] This was especially a problem on social media platforms like Facebook and YouTube that inundated users with quick hits of political promotions from unidentified sources.[134] In hopes of creating more transparency on this front, California passed a campaign finance reform measure in 2017 with a provision that specifically addressed the identity of the sponsor of an electronic media advertisement.[135] Now, electronic ads in California that are even short animated images or graphics must comply with the state's "Who Funded this Ad?" disclosure requirements.[136] The ad must therefore either include the name of the donor in the ad itself or provide a direct link to the sponsor's information and identification.[137]

C. Our Own Blank Canvas: New Hampshire

Politics and the effects of campaign finance tend to impact New Hampshire

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131 *Id.* at 37.

132 *Id.*

133 Lauren Feiner, *Political Ad Buyers are Exploiting a Facebook Loophole to Disguise Where Their Money is Coming from*, CNBC (Oct. 18, 2018, 3:29 PM), https://www.cnbc.com/2018/10/18/political-advertisers-using-facebook-loophole-to-hide-money-sources.html [https://perma.cc/4YVD-D5SJ].

134 *Id.*

135 Taryn Luna, *Who's Behind that Political Ad? Voters Will Know More in 2018*, THE SACRAMENTO BEE (Oct. 7, 2017, 2:07 PM), https://www.sacbee.com/news/politics-government/capitol-alert/article177659771.html [https://perma.cc/XCP2-SL7Y].

136 CAL. GOV'T CODE § 84504.3 (West 2019).

137 *Id.*; Andrew Garrahan, *California Legislature Passes "California DISCLOSE Act," a Complex but Clarifying Update to the State's Political Advertising Disclosure Rules*, INSIDE POLITICAL LAW (Sept. 18, 2017), https://www.insidepoliticallaw.com/2017/09/18/california-legislature-passes-california-disclose-act-complex-clarifying-update-states-political-advertising-disclosure-rules [https://perma.cc/NK66-H5F9].

and its voters more than in other states and regions. As the home of the first-in-the-nation presidential primary, the Granite State welcomes potential candidates for house parties and retail politics every four years, and with this comes a slew of political promotions and advertisements for these national candidates. On a state level, New Hampshire is not without its own campaign finance-related issues.[138] New Hampshire's Secretary of State regulates state campaign finance and enforces restrictions on contribution limits.[139] While the limits are similar to those imposed by other states and attempt to curb many of the problems faced on a national level, challenges still exist. For example, issues such as the "LLC loophole" essentially modify the cap on contribution limits for donors who own LLCs, while also limiting transparency.[140] Additionally, New Hampshire offers different contribution restriction levels for candidates who agree to abide by a voluntary spending cap of $650,000.[141] This allows a donor to contribute a higher amount to a candidate participating in the voluntary program, while a donor who does not agree to limit expenditures may only receive a lower amount.[142]

It is clear that issues related to campaign finance exist everywhere. No country, state, or city is immune to the impact of money's effect on political campaigns. But a majority of the public is dissatisfied with current laws and regulations and supports some form of change[143]—so what can be done? A good place to examine potential solutions is somewhere like New Hampshire—a small state with a very engaged electorate and a "Citizen's Legislature"[144] that is prone to examine popular social issues. Could the Granite State be an incubator in the search for some real change in campaign finance reform?

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138 Brendan A. O'Neill, Note, *The (Dunkin') Donut Hole: Fixing the LLC Loophole in State Campaign Finance Laws—A New Hampshire Exemplar*, 41 SEATTLE U. L. REV. 1227, 1228 (2017).

139 Political Contribution Letter from Michael A. Delaney, N.H. Att'y Gen., to William M. Gardner, N.H. Sec'y of State (Feb. 10, 2012) available at http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=13053.

140 O'Neill, *supra* note 138, at 1228. New Hampshire has no statute expressly prohibiting contributions by LLCs. *Id.* Each LLC is an individual "donor," regardless of who controls it. *Id.* Therefore, an individual who owns several LLCs could give the maximum amount allowed by law ($7000) from each LLC he/she controls. *Id.* There is no oversight on how many LLCs can be established for the purpose of making campaign donations under NH law. *Id.*

141 N.H. REV. STAT. ANN. § 664:5-b (West 2019).

142 N.H. REV. STAT. ANN. § 664:5-b.

143 PEW RESEARCH CTR., *supra* note 9.

144 *State Government Overview, New Hampshire Almanac*, NH.GOV, https://www.nh.gov/almanac/government.htm [https://perma.cc/56DF-KQDG] (last visited Sept. 9, 2019).

III. PICTURE THIS: NEW HAMPSHIRE'S OPPORTUNITY TO CREATE CHANGE

Politics is a way of life in New Hampshire. Not only do national candidates descend upon the state every four years for the first-in-the-nation presidential primary, but state and local politicians campaign bi-annually on a smaller scale. New Hampshire is one of only two states with two-year gubernatorial terms.[145] And those terms are unlimited[146]—so a popular governor could feasibly run again and again with no threat of term limits. Additionally, the New Hampshire House of Representatives is the second-largest governing body in the United States, after the U.S. Congress.[147] Again, these representatives run every two years without worrying about a limit to their time in office.[148] But at what cost? While the short terms give the public the opportunity to vote out elected officials who may not be doing a good job, the timeframes create an almost unavoidable continuing election cycle. Governors who are elected in November must start thinking about their reelection campaigns shortly after their inaugurations in January—because after all, the next year is an election year. And while New Hampshire House members may be a bit more insulated from the immediate effects of their decision-making, the sheer number of them and the continual nature of running for office forces them to continually remind the public of their service and their hopes of retaining their seats. With a state population of only 1.3 million,[149] coupled with such an active electorate and a large number of ongoing campaigns, New Hampshire may be a perfect location to try various forms of campaign finance reform.

A. First in Elections, First in Reforms

New Hampshire's unique political nature makes it an ideal incubator to test

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[145] N.H. CONST. PT. 2, art. 42; Jack (Anthony) Gierzynski, *The Vermont Legislative Research Service*, U. OF VT., https://www.uvm.edu/~vlrs/PoliticalProcess/Gubernatorial%20Terms.pdf [https://perma.cc/9PKE-29N7] (last visited Sept. 22, 2019).

[146] N.H. CONST. PT. 2, art. 42.

[147] *State Government Overview, New Hampshire Almanac*, NH.GOV, https://www.nh.gov/almanac/government.htm [https://perma.cc/56DF-KQDG] (last visited Sept. 9, 2019).

[148] N.H. CONST. PT. 2, art. 9.

[149] *Quick Facts New Hampshire*, UNITED STATES CENSUS BUREAU (July 1, 2018), https://www.census.gov/quickfacts/nh [https://perma.cc/MMK4-U9C3]. For comparison, the 2018 population of Rhode Island, the country's smallest state, was 1.05 million. *Quick Facts Rhode Island*, UNITED STATES CENSUS BUREAU (July 1, 2018), https://www.census.gov/quickfacts/RI [https://perma.cc/YK5W-GXNC]. The 2018 population of Boston was 695,000. *Quick Facts Boston City, Massachusetts*, UNITED STATES CENSUS BUREAU (July 1, 2018), https://www.census.gov/quickfacts/bostoncitymassachusetts [https://perma.cc/7JZF-2KY8].

potential methods of campaign finance reform. Looking across the globe and around the country, campaign finance rules seem to focus on several different areas of impact, not just on the traditional argument for contribution limits. Some of these regulations are a creation of the social norms and policies that are unique to various countries and populations. For example, Germany's reluctance to share information about one's political party would probably not be well-received here in the United States, where the growing trend is for individuals to share every move, meal, and moment on their social media accounts. However, other principles of reform—such as curbing spending, creating transparency by donor disclosure and identification, and publicly funding campaigns—could be tailored to fit and thrive in New Hampshire's environment. Each of these categories may have the potential to be successful in a small state with a large and rapidly changing group of elected officials.

B. Decreased Spending and Increased Disclosure

Unlike other countries, expenditure limits in the United States have essentially been deemed "nonstarters" because they are subjected to strict scrutiny in judicial review.[150] In the absence of legal reform, changes that are made privately—as opposed to those done through public efforts and regulations—may be the best way to curb spending without the risk of court interference. Going hand-in-hand with a decrease of campaign spending could be the increase of public disclosure of donors. An example of this dual-impact is the 2012 Massachusetts U.S. Senate race between Elizabeth Warren and Scott Brown, during which the two candidates took the "People's Pledge."[151] Both vowed that if an outside organization ran an advertisement in support of their candidacy, they would pay a "penalty" of up to fifty percent of the cost of the advertisement to their opponent.[152] While the agreement was not legally enforceable, it was more of a moral code that provided public accountability.[153] Moreover, the pledge was fairly successful.[154] There was not a significant influx of outside money in the race and the candidates held themselves accountable and paid the "penalty" when this occurred.[155] Aside from the financial impact of this pledge, the race was relatively positive and not fraught with the

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150 Robert Yablon, *Campaign Finance Reform Without Law*, 103 IOWA L. REV. 185, 200 (2017).

151 *Id.* at 217.

152 *Id.*

153 *Id.*

154 *Id.*

155 *Id.*

hostility we've come to expect in elections.[156]

The media is also a strong player in the campaign finance structure. Television networks profit immensely from political advertising.[157] In 2018—a non-presidential year—broadcast and cable networks in the United States received over $4.5 billion worth of advertising purchases.[158] But in a state like New Hampshire, where there is only one statewide television station, could some sort of privately-crafted reform be effective? Many major news outlets have advertising policies that outline the types of advertising they do and do not accept.[159] To build on this idea, New Hampshire's media outlets—including television, print, and radio—could independently organize a "code of conduct" regarding the types of political advertising that are run or band together to place restrictions on ad buyers to provide for more transparency.[160] This combination of oversight would still allow campaigns to advertise, but would also mandate that political organizations do so responsibly and honestly, like the "Stand By Your Ad" campaign organized during the 2012 presidential election.[161] If all types of media outlets would abide by the same code, a bubble of private media oversight could be created within the Granite State. While these efforts may seem lofty, stakeholders from the education community could be involved as well to encourage participation. There are many opportunities to make this type of program accountable and measurable as well. Educational groups within the state, such as the University of New Hampshire Survey Center and the New Hampshire Institute of Politics at St. Anselm College, are traditionally actively involved in the state's elections and political process.[162] These schools, along with other public policy groups, could provide assistance and academic oversight with such private media reforms on expenditures and donor identity to help determine whether these changes are effective once implemented.

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156 *Id.*

157 Jonathan Berr, *Media Companies Profit Handsomely from the Political Ads Voters Despise*, FORBES (Nov. 2, 2018, 5:44 AM), https://www.forbes.com/sites/jonathanberr/2018/11/02/media-companies-profit-handsomely-from-the-political-ads-voters-despise/#2a0efe1a3828 [https://perma.cc/3JSQ-3DY5].

158 *Id.*

159 Yablon, *supra* note 150, at 224–25.

160 *Id.* at 236.

161 *Id.* at 224.

162 *See, e.g.*, *About*, UNIVERSITY OF NEW HAMPSHIRE SURVEY CENTER, https://cola.unh.edu/unh-survey-center/about [https://perma.cc/B5H5-YLS6] (last visited Sept. 18, 2019); ST. ANSELM INSTITUTE OF POLITICS, https://www.anselm.edu/new-hampshire-institute-politics [https://perma.cc/6SHC-D6UX] (last visited Sept. 18, 2019).

Another potential method of privately-instituted reform could be a private agreement among wealthy donors to limit their political contributions. In an analysis of the 2012 presidential election, it was noted that Barack Obama and Mitt Romney received donations from a combined total of 3.7 million small donors.[163] However, these funds were equaled by the contributions of just thirty-two mega donors to various super PACs.[164] And this is not just a factor in presidential politics.[165] In 2010, the top one hundred individual donors in the United States combined to contribute $73 million to federal candidates.[166] By 2016, the top one hundred donors in the country gave an astounding $900 million to state and federal candidates.[167] With such a disproportionate figure, a $50 donation by a working-class voter is essentially pocket change to a candidate—and a tiny, unrepresentative group of Americans is primarily funding elections.

To combat the impact of excessive political contributions by the richest of the rich, New Hampshire could implement the "Democracy Pledge."[168] Modeled after the Warren Buffet and Bill Gates "Giving Pledge," the Democracy Pledge would entice wealthy donors to keep money out of politics.[169] Instead of pledging to donate a certain amount to nonprofits and other charitable organizations, the Democracy Pledge could set voluntary standards and limits for wealthy donors to follow. These guidelines could range from the restrictive, such as a limit or ban on direct contributions, to the basis, such as asking others to join them in not spending "defensively."[170] Again, the oversight with such a pledge would be based on public knowledge and accountability. Individuals would know who is abiding by such a framework and who is not. In instances where it is clear that one person or corporation "bought" or substantially funded an election, the public could react with some form of backlash—whether it's a public protest or a refusal to give the corporation continued business. While a limit on expenditures would not be statutory, such a pledge would prevent the mega-rich from contributing extreme sums of money, which would have a domino effect on the amount of money a

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163 Yablon, *supra* note 150, at 193–194.

164 *Id.*

165 Lawrence Norden et al., *How Citizens United Changed Politics and Shaped the Tax Bill,* BRENNAN CENTER FOR JUSTICE (Dec. 14, 2017), https://www.brennancenter.org/blog/how-citizens-united-changed-politics-and-shaped-tax-bill [https://perma.cc/2C5Y-G9T2].

166 *Id.*

167 *Id.*

168 Yablon, *supra* note 150, at 230.

169 *Id.*

170 *Id.* at 231.

campaign could spend. Further, the public would certainly know the identities of the donors who choose to—and who choose not to—abide by the voluntary reform.

C. State Statutory Opportunities

Another advantage of New Hampshire's large and citizen-led legislature is the ability to hold elected officials accountable for their votes. With such frequent elections for state officeholders, statutory measures that may be popular with voters are worth proposing in the legislature. If the public really does feel as strongly about campaign finance reform as national statistics show[171], encouraging elected officials to introduce and vote for legislation that could promote change would be an effective way of taking advantage of the over 400 officeholders who are up for election every two years.

Several options for statutory reform could be proposed based on models across the country. First, New Hampshire could eliminate and close the LLC loophole.[172] Instead of allowing an individual to make political contributions from each business he or she owns, New Hampshire could prevent this practice by defining the term "individual" in the state's campaign finance statute. Following the lead of Idaho, which implemented a broad definition of a "political committee" to help eliminate abuse of the 501(c)(4) loophole,[173] New Hampshire could similarly create an all-encompassing definition for the term "individual." Currently, the definitions provision of New Hampshire's campaign finance statute does not define the term "individual," yet it includes definitions of terms such as "business organization," "full name," and "occupation."[174] By including the businesses one owns in the definition of an "individual," New Hampshire may be able to prevent abuse of its campaign finance system by those who create LLCs simply for the purpose of evading the cap of personal contribution limits.

Additionally, New Hampshire legislators could work to strengthen campaign donor disclosure laws. Currently, state candidates and candidate committees must identify the names and addresses of donors who contribute over $100 to a campaign.[175] Instead of setting this threshold for donor disclosure, why not lower this amount to $50 or even $1? While it may be unlikely that an individual giving a small donation is attempting to "buy" an election, requiring the identity of all

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171 PEW RESEARCH CTR., *supra* note 9.

172 *See supra* notes 136, 138 and accompanying text.

173 *See supra* notes 124–26, 130–31 and accompanying text.

174 N.H. REV. STAT. ANN. § 664:2.

175 N.H. REV. STAT. ANN. § 664:6(I).

donors—regardless of the amount donated—may help candidates and voters see the value of transparency. It could also begin changing the culture of "dark money" by ensuring that no contribution is too big or too small to avoid identification. New Hampshire could even go further and implement restrictions similar to California's "DISCLOSE Act" requirements.[176] This could be especially effective with online media. It would mandate that any political advertisements run by local web-based news sources not only identify who is paying for a particular ad, but also link that advertisement to the sponsor's information. By doing so, voters would be able to easily toggle back and forth between advertisements and their funding streams.

D. Public Financing as Local Reform

New Hampshire has several different types of "local" politicians. There are four hundred members of the State's House of Representative and twenty-four members of the New Hampshire State Senate, making up the largest legislative body in the United States, after Congress.[177] Like other states, there are hundreds of other county, municipal, and town officials—from Aldermen to Selectboard members to County Attorneys, City Councilors, and School Board members. And while many of these races don't typically require huge campaign funds, most candidates solicit some type of contributions from the public—or dip into their own funds to run for office. During the 2015 mayoral races in New Hampshire's two largest cities, the four candidates raised a combined total of approximately $850,000.[178] One candidate raised over $300,000 from just 324 donors, while another candidate compiled just over $225,000 from 992 donors.[179] Judging by the amounts raised and the number of contributors, small municipal elections like these could also benefit from some form of public finance matching program.

By considering the number of candidates running for election in New Hampshire, along with the state's residents who actively want to participate in these elections, a "public" financing regulatory structure could be implemented in the Granite State. This would essentially allow expenditure limits and donor disclosure to be tied together in a solution that could be either public or private in nature. A similar structure has been implemented in New York City, where candidates for

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176 *See supra* notes 135–37 and accompanying text.

177 *State Government Overview*, NH.GOV, https://www.nh.gov/almanac/government.htm [https://perma.cc/EU5L-UWXG] (last visited Sept. 18, 2019).

178 Xanni Brown, *Big Money Dominates Top Mayoral Races in NH*, OPEN DEMOCRACY (Nov. 2, 2015), https://www.opendemocracynh.org/big_money_dominates_2016_mayoral [https://perma.cc/4LXX-ENNJ].

179 *Id.*

municipal office are given $6 in public funding for every $1 they raise from small individual donors.[180] Observers of this program say it has increased donor participation and encouraged candidates to reach out to a wider range of citizens, including those who may not typically participate in the process because of their background.[181] The result is an engaged electorate with a wide range of wealth and a diverse ethnic makeup, which is more reflective of the actual voter base.[182] The New York City program was emulated by the local Suffolk County, New York government which has also implemented a public matching donation structure.[183] In Suffolk County, individuals who run for county office and receive $5000 in contributions of $250 or less are eligible to participate in a 4-1 public finance matching program.[184] The program is especially attractive to candidates who aren't personally wealthy or for individuals who are challenging incumbents with built-up campaign funds from years of activity.[185] The county also recognized that oversight is an important part of the system and instituted a Campaign Finance Board that oversees compliance with the program.[186]

How should such a public finance program be funded? New Hampshire's towns and cities, along with the state as a whole, routinely face financial shortfalls.[187] Budgets are always tight and closely guarded—so these challenges must be contemplated when considering where funds for public financing would stream from. While there is the possibility of creating a public revenue stream of funding, this is another area where an agreement in the private sector may be helpful in building up a funding mechanism.

New Hampshire is a state with high levels of wealth and low levels of taxes. In

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180 Zocalo Pub. Square, *supra* note 7.

181 *Id.*

182 *Id.*

183 Steve Bellone, *Improving Democracy: Campaign Finance Reform*, LONG ISLAND PRESS (Sept. 9, 2018), https://www.longislandpress.com/2018/09/09/improving-democracy-campaign-finance-reform [https://perma.cc/GPH2-PFKX].

184 *Id.*

185 *Id.*

186 *Id.*

187 Ryan Lessard, *Manchester Begins the School Year After $8 Million Budget Shortfall and Teacher Union Impasse*, N. H. PUB. RADIO (Aug. 28, 2012), https://www.nhpr.org/post/manchester-begins-school-year-after-8-million-budget-shortfall-and-teacher-union-impasse#stream/0 [https://perma.cc/W754-HSWN]; Ethan DeWitt, *Capital Beat: N.H. Faces $36 Million Budget Hole After Hospital Lawsuit*, CONCORD MONITOR (Apr. 14, 2018, 9:04 PM), https://www.concordmonitor.com/New-Hampshire-facing-$36-million-budget-shortfall-after-hospital-lawsuit-16846848 [https://perma.cc/MN7D-ZF5P].

2016, New Hampshire boasted the highest median income of any state in the nation—a number that was thirty percent higher than the national median.[188] And without a sales or income tax, many people are drawn to relocate to the state to reap those benefits.[189] That does not mean, however, that New Hampshire residents are not generous. In 2017, Granite Staters were ranked 13th most charitable in the nation when combining their charitable giving levels with their willingness to participate in volunteer work and other service.[190] Given this combination of wealth and generosity, a private partnership of New Hampshire individuals could band together to emulate the Warren Buffett-Bill Gates Democracy Pledge and create a "Democracy Fund." In lieu of pledging not to contribute significant funds, the individuals could instead collaborate to create a pool of resources that could be used to start or maintain a public campaign finance fund. Many New Hampshire companies are also like-minded and charitable and put corporate responsibility at the forefront of their business models. One example is Stonyfield Farm, Inc., based in Londonderry, New Hampshire, which is a Certified B Corporation that meets rigorous standards to "balance profits with purpose."[191] Similarly, Timberland, based in Stratham, New Hampshire, makes corporate responsibility a major part of its business model with employees completing one million hours of community service in 2015 and participating in over 5000 community service projects across the world.[192] With companies like this operating in New Hampshire, there is the possibility to create a partnership of organizations to band together and help

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188 Christopher Ingraham, *The State with Highest Median Income is . . . New Hampshire?* PORTLAND PRESS HERALD (Sept. 14, 2017), https://www.pressherald.com/2017/09/13/the-state-with-highest-median-income-is-new-hampshire [https://perma.cc/AZ8D-G6DS].

189 Justine Paradis, *You Asked, We Answered: Why is New Hampshire SO Against Having an Income Tax?* NEW HAMPSHIRE PUBLIC RADIO (Feb. 9, 2018), https://www.nhpr.org/post/you-asked-we-answered-why-new-hampshire-so-against-having-income-tax#stream/0 [https://perma.cc/YT9Z-3EJY].

190 Karsten Strauss, *The Most and Least Charitable States in the U.S. in 2017*, FORBES (Dec. 4, 2017, 3:23 PM), https://www.forbes.com/sites/karstenstrauss/2017/12/04/the-most-and-least-charitable-states-in-the-u-s-in-2017/#dce82e920703 [https://perma.cc/manage/create?folder=8822].

191 *Contact Us*, STONYFIELD FARM, INC., https://www.stonyfield.com/contact-us [https://perma.cc/DS7B-UYWW] (lasted visited Sept. 18, 2019); *About Us*, CERTIFIED B CORPORATION, https://bcorporation.net/about-b-corps [https://perma.cc/H88G-7FRL] (last visited Sept. 18, 2019). B-Corp certification is administered by the B-Lab, a nonprofit that certifies companies based on their entire social and environmental performance, and who have amended governing documents to balance profit and purpose. *Id.*

192 *Contact*, TIMBERLAND, https://www.timberland.com/timberlandpro/contact-us.html [https://perma.cc/TX7C-MJ4U] (last visited Sept. 18, 2019).

establish enough funding to create a "public" finance stream.

Another option is to use a ballot measure to create a public campaign finance fund in individual towns and cities. Each year at New Hampshire town meetings, residents vote on various items, such as improvements for schools and funding for conservation projects.[193] A locality interested in trying a public finance matching program could seek to pass a ballot measure that would increase taxes by a small amount in exchange for creating such a fund. Alternatively, Hawaii collects funds for its public finance program through a voluntary opt-in to the Hawaii Election Campaign Fund.[194] The funding is raised through individuals who indicate they want to contribute to the fund as part of their state taxes.[195] These voluntary programs could catch on and take the route of many individuals who voluntarily seek to deduct a few dollars from their paychecks each week for some form of charitable giving. The mechanisms for this type of funding are already in place, as many members of state labor unions donate funds directly from their paychecks each pay period to a related labor PAC.[196]

CONCLUSION

Citizens United may have changed the landscape of campaign finance in the United States, but all hope is not lost. Even in light of the ruling, there are things that can be done and efforts that can be made to lessen the impact of money in politics. New Hampshire is well-poised to learn from some of the examples implemented elsewhere and to test them out on a small scale. The Granite State welcomes the first-in-the-nation presidential primary every four years—let's also be first in the nation to welcome the implementation of a way to limit the impact of political spending and help reform the country's campaign finance system.

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193 H. Bernard Waugh, Jr. & Cordell A. Johnston, *16 Things Every Citizen Should Know About Town Meeting*, NEW HAMPSHIRE MUNICIPAL ASSOCIATION (Jan./Feb. 2015), https://www.nhmunicipal.org/TownAndCity/ Article/600 [https://perma.cc/W9RK-KJUR].

194 *Overview of State Laws on Public Financing*, NATIONAL CONFERENCE OF STATE LEGISLATURES, http://www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx [https://perma.cc/KD3U-WYZ4] (last visited Sept. 18, 2019).

195 *Id.*

196 29 C.F.R. § 3.5(i) (2019).